

NATURE OF LAND RIGHTS IN KASHMIR UNDER DOGRAS – 1846-1947

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The rights over land has always been a subject of much controversy in the annals of history in almost all over the world. In the context of India it is the security of tenure, which has always been regarded as a primary condition of successful agriculture. On the question of land rights, the facts are too scanty to form a precise description. Modern writers offer divergent views on the proprietary rights of land as some consider the king as the proprietor of land while others peasant regard as the owner. To quote W.H. Moreland:¹

I have not yet found any scientific discussion of what seems to me to be the antecedent question, whether the conception of ownership of agricultural land had been reached at the time when the sacred law was formulated. There is no doubt that individuals or families could hold heritable and transferable rights in particular parcels of land, because the texts deal with inheritance, and with transfer by gift, sale or mortgage; the question is whether the rights which were inherited or transferred amounted to ownership in the ordinary sense of the word or whether they were merely rights to occupy subject to the king, pleasure.

From the records available on land rights, however, no precise answer could be given. For one the rights which in aggregate constitute ownership, in the English sense of the word, did not as a rule rest in one person, but were distributed irregularly among the various parties connected with the land.²

Similar picture could be depicted with regard to the allotment of land in Kashmir. Rights over land in Kashmir during the Dogra Rule (1846-1947) had altogether a unique background, for it is not by virtue of conquest as has been the case with the Panjab³ and other neighbouring areas. In Kashmir the founder Maharaja of the Dogra Rule (Gulab Singh) claimed to have purchased the kingdom from the British for an amount of Rupees 75 lacs under the Treaty of Amritsar.⁴ As a result of this sale deed with the British Maharaja henceforth claimed exclusive right in land and other treasures including people.

Given the fact that the agrarian relations underwent some radical changes from time to time during our period of study (1846-1947 A.D.) and the problem of land rights especially witnessed dramatic changes at different times, it is, therefore, necessary to study the subject in different phases:

Maharaja as a sole owner (1846-1894)

The transfer of Kashmir to Maharaja Gulab Singh (1846-1887) in 1846 A.D., by virtue of the Treaty of Amritsar,⁵ led to the momentous consequences affecting the life and conditions of the people of Kashmir. One such consequence was the declaration of all occupancy and proprietary rights in land of Kashmir as null and void.⁶ This declaration was made by none other than Maharaja Gulab Singh⁷ himself, and was strictly adhered to by the subsequent Maharajas during our period of study. Maharaja Gulab Singh and his successors claimed Kashmir as their private property on the ground that they had purchased it in lieu of seventy-five lakhs of rupees from the British. To what extent they were genuine in their claims is a question beyond the scope of our present discussion,⁸ yet it is a fact that the provision, "*In consideration of the transfer made to him (Maharaja Gulab Singh) and his heirs by the provisions of the foregoing articles, Maharaja Gulab Singh will pay to the British government the sum of rupees fifty lakhs (Nanak Shahi) to be paid in ratification of this Treaty, and twenty-five lakhs on or before the 1st October of the current year A.D. 1846*", embodied in the Treaty was fully exploited by Maharaja Gulab Singh and his successors. The Dogra propaganda that Kashmir was their purchased property convinced even the Kashmiris, which is why the *Treaty of Amritsar* was translated and spoken of not only in the official records and by the officials but also by the public as *Bainama-i Amritsar*, meaning sale-deed effected by the *Treaty of Amritsar*.⁹

While regarding everything that existed in Kashmir as their purchased property, the Dogra Maharajas laid much emphasis on the concept of State Ownership¹⁰ of land, we have evidence which refers to the Maharajas' legalizing their claim of being proprietors of the land on the basis of having purchased it.¹¹ Even as late as 1918 A.D., Maharaja Pratap Singh (1885-1925) wrote to his Chief Minister:

"As you are already aware of the proprietary rights in all the lands in Kashmir belong to the Ruling Chief exclusively, for the simple reason that the territories of Kashmir were purchased by my late lamented grandfather Maharaja Gulab Singh Ji and hence any sale of such land by anyone else is illegal".¹²

Hence in the new circumstances, government became "a farmer working with collies under a management closely approximating forced labour."¹³ During the initial phase of Dogra rule we even find the state resorting to the annual distribution of land among the peasants.¹⁴

It is a fact that a few individual other than the Maharaja, enjoyed the proprietary rights in land,¹⁵ but this proprietary right, it is to be noted, was conferred by a *sanad* and was especially bestowed upon the grantees. Referring to this fact Andrew Wingate writes:

"Now whatever rights cultivators may have it is certain that ownership of villages unless conferred by the Darbar by *Sanad* does not exist in Kashmir".¹⁶

Not only this, the *Mukarrari Chakdars* were allowed to sell their assignments with the prior sanction of the Darbar.¹⁷

Andrew Wingate, who was appointed as the first Land Revenue Settlement Officer of Kashmir in 1887,¹⁸ provides us a detailed information about the fact that the Kashmiri peasant enjoyed neither occupancy nor the proprietary rights.¹⁹ Pleading for the occupancy rights to be given to the peasants, he writes:

"The Darbar cannot protect itself without the assistance of the cultivators, nor is any land settlement likely to last which does not engage the active sympathies of the agricultural population in support of the state policy. This assistance and this sympathy can only be won by conferring upon the cultivators, possession of the land they till".²⁰

While disapproving the policy of the Darbar to "govern much as a Zamindar manages a private estate by farming with tenants-at-will," he further says that, "If he (peasant) is to sell his produce, buy cattle and seed, enter into banking arrangements, who is going to contract or to open accounts with a day labourer, a man who, when he is turned out, wanders about with a petition in his hand for months? If your Highness looks for revenue, the cultivator must have a right to remain in possession and it is, I feel sure, your Highness's wish that he should remain in possession. The only question, therefore, is for how long ought the right of possession to be conceded. A lease for a long term say 30 to 50 years, would doubtless effect some good."²¹

It is at the instance of the strong recommendations of Andrew Wingate and his successor settlement officer, Walter Rooper Lawrence²² that occupancy rights were given a legal sanction by the Maharaja in 1895-96.²³ Yet the peasant of *Jagirs* and *Chaks* continued to remain as *tenants-at-will*.²⁴ The state policy of revoking even occupancy rights of the peasantry was obviously meant to legalise its policy of fleecing the latter.²⁵

Theoretically the peasants did not enjoy the occupancy rights, and practically speaking occupancy rights were not interfered with. Interference in this right was neither in the interests of the

Government nor of the peasants.²⁶ Therefore, the possession of the occupancy rights by the peasantry was a practical, if not a legal, fact. This fact has been vividly summarized by Lawrence in the following words:²⁷

It is necessary to define the word *assami* so often used in this report. It is a word of old standing in Kashmir. The *assami* may be defined as a man recognized by the state as the lawful occupant of land in Kashmir, and in the Mughal times and thereafter, from the point of view of the state, the status of *assami* in theory meant nothing more than a tenant-at-will. But in the village the *assami* was a man in whom vested the *miras* or hereditary rights to certain plots and of good and irrigated land within the boundaries of the village. In many disputes which I have had to decide as to rights in land the decision always rested on the existence of *miras*, and in the village it was never difficult to ascertain on the spot whether a claimant were a *mirasdar* or not. Changes of dynasty and changes of system, earthquakes, floods, and famines, have alike failed to obliterate the hereditary principle in land tenure in Kashmir, and while Mughals, Pathans, Sikhs, and Dogras have steadily ignored the existence of hereditary rights, those rights have been kept alive by the village.

It was because of the regard shown to the hereditary occupancy rights that we find some influential persons offering protection to the peasants from *begar* or forced labour and from official persecution in lieu of agreements from them that "their village has long been the property of such and such Pandit".²⁸ However, it does not mean that a peasant would continue to occupy his land even if he did not cultivate it. If a peasant failed to cultivate his land, it was given to someone else.²⁹

However, one need not get confused when one finds Wingate and Lawrence referring to the sale of land by the peasants.³⁰ It was not the sale of the proprietary rights but the sale of what Lawrence terms as the "shadowy rights"³¹ or "silently recognized *miras* rights" which we find the peasants frequently enjoying.³² The state did not bother much about these "private sales" believing that since "the Darbar is the owner, it does not matter if people do buy and sell their land... There is no custom of sale or mortgage and that all such documents are null and void".³³

As a matter of fact the state, because of the scandalous character of the officials, failed to prevent "private sales". To quote Wingate:

"Last year the Darbar ruled that sales are illegal and yet during the last winter not one of the officials from the highest downwards paid any attention to the order."³⁴

Though the occupancy rights, non-alienable by sale or mortgage, were conferred on a small portion of peasantry in 1895-96 living in villages, such alienations were permitted in the cities,³⁵ however, the ownership rights still vested with the state. Transfer of land under lease for a specific period was also permitted prior to the sanction of the Darbar under some condition.³⁶

British Domination and Land Reforms: Period of Hereditary Occupancy Rights (1895-1932)

The second phase is important in this respect that the peasant got some legal status on land. It is, however, necessary to know the background, which motivated the Dogra rulers to take this important step. It must be noted that the British never wanted to give a free hand to the Dogras. Instead they wanted to have a dominant say in the Kashmir administration. To fulfill their aim, they made one or the other excuse till they succeeded in establishing a permanent Residency in Kashmir in 1885, through which they kept supervision over Kashmir affairs, though for their own imperial aggrandizements. The British Government mounted great pressure on Kashmir Darbar for undertaking reforms, which is evident from a letter from Lord Kimberly to the Viceroy of India in 1883 A.D.:³⁷

As to the urgent need for reforms in the administration of the state of Jammu and Kashmir, there is, no room for doubt. It may, indeed, be a question whether having regard to the circumstances under which the Sovereignty of the country was entrusted to the present Hindoo Ruling family, the intervention of the British on behalf of the Mohammadan population has already been long delayed.

In order to give Kashmir Government their expert advice, the British managed to send some British Officers for this purpose. This is what the secretary to the Foreign department Government of India, wrote to the Officer on Special Duty in Kashmir on August 1, 1884 A.D., "... and will also be willing to place at his disposal, for a time, the services of officers of the British Government who may seem specially qualified to assist the new administration to carry out the measures contemplated. Such assistance seems to be more particularly required with regard to the revision of the Settlement and the construction of the road."³⁸ Hence Col. Sir O St. John, was promoted in September, 1885 as the first British Resident in Kashmir from the post of officer on special duty, and Andrew Wingate was sent in 1887 to conduct the Land Settlement.

Wingate, after studying the problem very minutely and completing the survey of two tehsil, Lal and Phak in Kashmir, submitted his Preliminary Report of Settlement Operation in Kashmir and Jammu on August 1, 1888.³⁹ He made various proposals with regard to land ownership, *chakdars*, wasteland, distribution of water for irrigation, *waddari* system, etc. But we will mainly focus on the aspect of land ownership here and the recommendations made thereof by Wingate. He took a very bold step when he recommended not only the hereditary occupancy rights but also the proprietary rights for the *khalse* peasants, which can be summarized briefly as under:⁴⁰

1. The rules of settlement should declare land as state property;
2. The rights of occupancy be conferred on the cultivators for the land into their account at the time of settlement.
3. The occupant should have the land in his possession and actually cultivating it directly or indirectly;
4. The name of anybody belonging to the non-cultivating class be entered as occupant only after proper inquiry;
5. The Right of occupancy should be hereditary;
6. The occupant should have the right to sell, mortgage or transfer the land but only to a person belonging to the cultivating class; and
7. The occupant could sell or mortgage the land to a person belonging to the non-cultivating class only if such sales or mortgages would be first of all sanctioned and then registered by an office specially constituted for this purpose, otherwise the defaulter would be liable to punishment and eviction.

As anticipated by Wingate himself, his proposals were opposed and resisted by all the vested interests led by the Revenue officials and land grabbers combinely. Even the cultivators were made to believe the uselessness of Wingate's proposals and, therefore, "he had to give up in the face of bitter opposition and intrigue."⁴¹ So in 1889, Walter Rooper Lawrence replaced Wingate as the settlement officer of Kashmir to carry on the Land Settlement. Though Lawrence, too, faced bitter opposition from the side of the revenue machinery and others, but he managed to win over the cultivating class and succeeded in his mission.

Regarding the land ownership, Lawrence agreed with Wingate except in respect of right of sale and mortgage for the *assamis*. Like Wingate, he also advocate that all the Muslims, having undisputed occupancy of land, should be entered as *assamis*, and the disputed cases be settled on the spot, by the settlement officer on the basis of

evidence and all the Hindus and Sikhs could be entered as *assamis* only on the orders of the settlement officer. He also proposed that all waste and fallow lands be entered as *khalse* lands but the village *assamis* will have prior right to acquire these under rules, and if they fail to do so, then only the outsiders could acquire this.⁴² Lawrence argued that the bestowal of permanent hereditary occupancy right would be conditional upon the fact that at the time of assessment, he had agreed to pay the assessment fixed for him and entered into the settlement papers, and could not be ejected so long as he paid the assessment.⁴³ "This right of occupancy is hereditary", says Lawrence, "but it is not alienable either by sale or mortgage". Lawrence had strong arguments for not allowing the right of sale and mortgage to the hereditary occupant of the land whom he called *assami*. Wingate had allowed these rights with the condition that he could sell or mortgage the land only to the bonafide cultivators, unless there was a proper sanction of the Darbar on the recommendation of an Officer specially appointed for the purpose. But Lawrence argued that even if there was such a condition on the right of sale and mortgage, there existed in villages numerous greedy *Lambardars* who were themselves bonafide cultivators and could purchase these lands from the needy cultivators.⁴⁴ Besides, even the officials could purchase the lands by proxy through their cultivator-agents and it was not possible to have an honest officer who could not be induced by huge bribes and thus manage sanction in favour of a person belonging to non-cultivating classes. On the other hand, cultivators were ignorant and lacked farsightedness: they would acquire money by selling their lands and in this way bring ruin for themselves.⁴⁵ Lawrence argued that since the price of land was increasing because of the road upto kohala, the peasants of Kashmir would be deprived of valuable lands. Thus the *khalsa* peasants (especially *mirasdars*) were conferred upon the permanent hereditary occupancy rights, non-alienable either by sale or mortgage.⁴⁶

Before giving further details, it is necessary to deal with the Jagirdars and Chakdars and their tenants with regard to land ownership. It is suffice to say here that before the settlement, they did not enjoy any occupancy or ownership rights legally. Some landlords⁴⁷ had ownership rights bestowed upon them by the Darbar.⁴⁸ Wingate saw that the allotment of *chaks* for the purpose of increasing the revenue was being misused by the officials for parceling out cultivable lands among themselves. Since that authority of allotment had been accepted, the rules should, he argued, therefore, confer occupancy title on such landholders but without giving them the

right of sale and mortgage.⁴⁹ With regard to the excess lands, Wingate recommended that these be resumed on the report of the settlement officer, otherwise these lands be recognized. Such a provision would do away with the difference made in the tenures of the tenants and *chakdars*, and the settlement officer should also have the power to decide if the tenant had the right of occupancy under *Chakder* in case the land taken as *chak* had been cultivated land or temporarily fallow.⁵⁰ The settlement officer should also, argued Wingate, have the power to give the right of occupancy to an evicted cultivator since the day the settlement started. In this way, Wingate confirmed the *chak* grants. Lawrence, too, proposed that their land allotment be confirmed on privileged rates upto the next settlement and the excess land held by them be retained if there was no dispute but only on ordinary rates.⁵¹ The privileged rates could continue only for ten years of settlement after which only ordinary rates could be applicable. Thus while confirming the landlords, Lawrence also did not recommend any right to the tenants working in their estates. The tenants of these landlords continued to be tenants-at-will.

The position being already established by both Wingate and Lawrence, the landlords now mounted pressure on the Darbar to confer such rights on them as soon as possible. It was, therefore, in 1900 that the *assami* rights were conferred on them legally but their tenants were given permanent cultivating rights and not the *assami* rights.⁵²

Thus Wingate and Lawrence brought about a tremendous change in the status of the peasant, but they were not revolutionary in their reforms. They did give peasant a legal status of occupancy on land but did not confer upon him the status of peasant proprietor, and legally, the land continued to be the property of the Maharaja. Moreover, they made the landlords *assamidars*. This measure was against the interests of the peasant community because as a result these landlords could easily grab more and more land, taking advantage of the wretched condition of the peasant. They were waiting for an opportunity when the *assamis* could be given proprietary rights which could give them the right to sale and mortgage.

The conferment of *assami* rights on the landlords created great tenancy problems in the context of increase in the number of tenants a result of the evictions. So Maharaja Pratap Singh passed the Tenancy Act of 1923 which divided the occupancy tenants (*Kashtker Mustakil*) into four categories and the landlords were restricted to evict their tenants till they declared the land unfit for cultivation or

failed to cultivate it.⁵³ At the same time, the tenant could be declared as occupancy tenant of any category under rules if he had been shown as tenant-at-will by mistake at the time of the first regular settlement, and even those who were not occupancy tenants were declared as protected tenants.

Period of Proprietary Rights (1933-1947)

The third and the last phase of the Dogra rule with regard to land ownership is most important in the sense that the occupancy rights conferred on the *marsi* peasants in 1895-96 were converted into proprietary rights in 1933 as a consequence of the pressure exerted by the Kashmiri leadership and the British Government since twenties of the twentieth century.

In 1924, the landlords of Kashmir submitted a memorandum to the Viceroy of India, Lord Reading, on his visit to Kashmir, which contained among other things, the demand for granting proprietary rights to the peasants of Kashmir.⁵⁴ It is surprising how they demanded the grant of such rights to the peasants, which was obviously against their interests. But, in fact, they knew it for certain that the grant of ownership rights would undoubtedly enable them to purchase more and more land mainly because of their stable economic and social position.

On the other hand, after the establishment of the Residency in Kashmir in 1885, the European influx had increased tremendously. The British Government of India insisted upon the Maharaja to allow them to purchase land in Kashmir; a demand, which was not conceded by the Maharaja.⁵⁵ Instead, Hari Singh, the heir-apparent, issued a circular in 1924 to the effect that "no land will be given to non-state subject henceforth."⁵⁶ A committee was setup for the purpose in September 1924, which submitted its report in 1925, and its recommendations were readily accepted by the Maharaja.⁵⁷

13 July, 1931 marked beginning of a new epoch in the history of Kashmir, as it inaugurated the Freedom Struggle of Kashmir,⁵⁸ which mounted a great pressure on Maharaja for economic and political reforms in Kashmir. Subsequently a Memorial of the Demands of People⁵⁹ was submitted on October 19, 1931 to the Maharaja, which besides other things demanded the grant of proprietary rights to the Kashmir peasantry. The demand laid down as:

Zamindars⁶⁰ in Kashmir are deprived of proprietary rights. The people of Kashmir cannot sell or mortgage their lands of their own will. They cannot even cut the mulberry, the walnut and the

Chinar trees grown on their private lands or make use of them, nor can they remove the dead and fallen timber of such trees with the result that the Kashmir Zamindar is no better than a mere tenant. There is no reason to make a distinction between Kashmir and other parts of the State. The State cannot claim proprietary rights over Kashmir lands merely because Kashmir was purchased from the British. A transaction of this kind could only affect the rights of the Government, but not the proprietary rights of the lands belonging to the people. We, therefore, request your Highness to be most graciously pleased to restore Your Highness' Zamindar subjects to their full proprietary rights.

In this connection we may add that the view expressed in certain quarters that the present system is in the interest of Zamindar himself is incorrect. There can be no justification whatsoever in depriving a person of his lawful rights with the alleged objection of protecting him against the danger of his land passing into the hands of the money-lenders. In our opinion this danger can and should be effectively guarded against by the introduction of such measures as the Land Alienation and pre-Emption Acts. Anyhow, nothing should stand in the way of full proprietary rights being granted to the Kashmir Zamindars.⁶¹

It is, however, worth noting that after the uprising of July 1931, the Resident in Kashmir submitted a note to the Maharaja asking for his full compliance within twenty four hours, suggesting among other things, the appointment of an English Officer for looking into the grievances of the Muslims.⁶² On the other hand, the Movement also increased its pressure for the purpose, resulting in Maharaja Hari Singh (1925-1947) appointing a commission under the chairmanship of a British Officer, a man from political department in Government of India, namely B.J. Glancy on November 12th, 1931.⁶³ The Commission recommended many things to the Darbar, including the proprietary rights:⁶⁴

In the Kashmir province the state is the owner of the land, but *Malikana* is merged in the land revenue, that is to say, no recovery is made on this account over and above the land revenue.... From what has been said it will be recognized that the bestowal of proprietary rights, where these rights are now vested in the state, would be in the nature of a pure concession. In the opinion of the commission, if His Highness is pleased to approve of this policy, the advantages to be expected therefrom are sufficient to outweigh any objections that can be raised, provided that suitable steps are taken to prevent the concession from abuse.

In order to prevent the transference of land into the hands of non-agriculturists, the Commission further recommended:⁶⁵

If proprietary rights are bestowed it appears essential to safeguard the interests of agriculturists by the introduction of Land Alienation Enactment in those parts of the state where such legislation is not at present in force; a Pre-emption Act is also desirable and it is suggested that, at least as a temporary measure, an agriculturist should only be allowed to alienate his land whether by sale or mortgage to a member of that particular agricultural class to which he belongs himself...It is suggested that no holder who does not at present possess proprietary rights should be permitted to alienate more than 25% of his holding within the next ten years, after the lapse of that period the situation might be carefully reviewed; and it could then be decided in the light of the experience gained whether the process of alienation had been such as to make it advisable for these restrictions to be continued or for any other safeguards to be imposed.

As already noted alienations and mortgages in the city of Srinagar and other major towns here already in practice,⁶⁶ the Commission, therefore, did not make any strong recommendation in this regard, which is reflected in its following statement:⁶⁷

In case of Srinagar city and certain towns in the Kashmir province, it appears that the grant of proprietary rights would not involve a change of any great practical importance. Landholders in Srinagar already possess what is known as "*Haq-i-Marafaq*" (right of easement) which does not differ materially from proprietary rights, since it carries with it the power to alienate.

It is, however, notable that the commission recommended the grant of proprietary rights to the peasants whose lands had been so far held in ownership by the state, which ironically did not touch the lands of the landlords. In other words, it can be concluded that he confirmed the rights and privileges of the landlords.

Ultimately, it was in April, 1933 that the Maharaja finally accepted the demand of granting proprietary rights to all those who were hitherto enjoying occupancy rights.⁶⁸

The Order issued to this effect reads:⁶⁹

His Highness the Maharaja Bahadur is also graciously pleased to concur in the recommendations that proprietary rights should be conferred in respect to all lands of which the ownership is now held by the state and occupancy rights are enjoyed by private persons. The Revenue Minister should in the first instance examine the safeguards suggested by the commission for the protection of the agricultural classes, and should submit his report accordingly.

Also it was owing to the demand of the Kashmiri leaders *via* their Memorial of 1931⁷⁰ that the Land Alienation Act of 1933 was

passed to stop the alienation of land from the agriculturists to the non-agriculturists.⁷¹ It restricted the alienation of land beyond twenty five percent of the agriculturists holding for the first ten years.⁷² One more Act, known as the Right of Prior Purchase Act of 1937 was also passed which recognized the right of pre-emption among agriculturists with regard to such lands.⁷³ Hence the question of ownership was eased to some extent and later on it was under the popular government, with Shaikh Mohammad Abdullah as its leader, that this problem was resolved by giving land to the tiller at various phases mainly under the provisions of Naya Kashmir manifesto.

NOTES AND REFERENCES

1. The texts discuss these rights as between individuals, but say very little as to their precise nature or their relation to the sovereign. A few passages however indicate the existence of an over-riding authority, notably one in Brihaspati (xxxiii, 353) where the king's action in taking land from one man and giving it to another is placed on the same footing of inevitability. In the Arthashastra again (p.50) there is a definite recommendation to eject peasants for laziness or inefficiency. One cannot agree that such passages are conclusive, but merely that they require to be taken into account when the question of ownership is discussed. Reference may also be made to a couplet quoted by a commentator on the Arthashastra (p.140) to the effect that land and water were not objects of private ownership. W.H. Moreland, *The Agrarian System of Moslem India*, Delhi, 1988, p.4.
2. Ibid., p.158.
3. B.H. Baden Powell, *The Land Systems of British India*, II Oxford, 1892, p.611.
4. For details see f.n.8 of this paper.
5. *The Treaty of Amritsar* was an offshoot of the *Treaty of Lahore*, Raja Gulab Singh of Jammu who had supported the British in the Second Anglo-Sikh War, of 1846 was rewarded with the territories of Kashmir for which a provision was incorporated in the Treaty of Lahore. Consequently, the *Treaty of Amritsar* of March 16, 1846 between the British on one side and Raja Gulab Singh on the other was forged.
6. Indian National Archives (INA), Foreign Department Section E: Nos.422-43, Proceedings, Dec.26, 1846: Saif-ud-Din, *Diaries*, Vol.III, f.142: Manuscript Section (MS) Kashmir University Library. It may be noted that we have evidence of private ownership of land enjoyed by the people of Kashmir since ancient times till Kashmir was transferred to the Dogra Maharaja in 1846. See Kalhan's *Rajatarangni*, Vol.I, p.235: Vol.VI, pp.30 and 33 for the pre-sultanate period; for the Sultanate period, see, *Tuhfat-l-Ahbab*, f.82 (available in the Research and Publication Department, J&K Government, Srinagar, hereafter RPD); J.C. Dutt, *Rajatarangni*, p.81. However, when the Mughals ousted the chaks in 1586, they found that the land revenue realized from the valley was not sufficient to feed a city as large as Srinagar. So Akbar increased the Government share from 1/3 to 1/2. This caused resentment among the agriculturists and there broke out disturbances in which a Mughal Official Qazi Ali was killed. Under these circumstances Mohd Yar Khan refused to remain in charge of Kashmir. To contain the agriculturists, Akbar by an order brought all cultivable land under head Khalsa spirit. Hereafter Kashmiri landowners were entered in the revenue records as tenants. Abul Fazl, *Ain-i Akbari*, Reprint 1977, Vol.I, pp.370-71. With the advent of the Afghan

rule all the rights of the villagers were set aside and they were robbed off their production. Their successors, who were a little better, ousted some of the Jagirdars and re-distributed these Jagirs according to their administrative convenience. It is also noteworthy that during the Sikh rule land was let out on tenure basis for cultivation and the government took the share of the produce from the cultivators as rent. The villagers were given occupancy rights and not the ownership rights. W. Moorcraft, *MS. Eur. D. 264*, pp.110-112.

7. *Jammu and Kashmir Government (JKA) Persian Record hereafter (PR)*, File No.877-M of Samvat, 1904; Archival Records Jammu and Kashmir, Pol. & Gen. Department; File No.191/M-75 of 1891; Robert Thorp, *Kashmir Misgovernment*, London, 1870, p.62; K.M. Pannikar, *Gulab Singh, Founder of J&K State*, London, 1930, p.112 and Hashmat-ullah Khan Lakhnawi, *Tarikh-i Jammu*, Lucknow, 1934, p.58.
8. It has been a moot point whether the Maharaja really purchased Kashmir. However, from a close examination of the Treaty and other records of the period, it is quite clear that contrary to the claims of the Maharaja, the payment of seventy-five lakhs of rupees was not a price in lieu of which Kashmir was sold to Maharaja Gulab Singh. Instead, it was simply an amount, which they demanded from him for bestowing upon him the rulership of Kashmir. For all practical purposes he was under the control of the British paramountcy and was never allowed a free hand in the affairs of the state which is clear from the tenth article of the Treaty of Amritsar which provides, "Maharaj Gulab Singh acknowledges the supremacy of the British Government and will in token of such supremacy present annually to the British Government one horse, twelve goats (6 male and 6 female) and three pairs of Kashmiri shawls." Though the Maharaja of Kashmir exploited the ignorance of the Kashmiris and established his absolute ownership, but we do not find even a single reference that Gulab Singh has ever paid the said amount and that it was received by the British. The transfer of Kashmir to Gulab Singh was more a reward than a sale-deed. INA, *Foreign and Political Department, Sec. E.*, Nos.1243-47, Proceeding hereafter (progs) Dec., 26, 1846; INA, *For Deptt, Sec Nos.442-43*, Proceedings Dec.26, 1846, Sec. Also, N.D. Nargis, *Tarikh-i Dogra Desh*, Jammu, 1967, p.605.
9. During the Freedom Struggle in Kashmir (1931-1947), the common slogan was *Bainamai Amritsar tod Do. Kashmir Ko Chod Do*, Rashid Taasir, *Tarikh-I Huryat-i Kashmir*, Vol.I, Srinagar, 1968, p.50.
10. The concept of personal property was carried by Maharaja Ranbir Singh (1857-1885) as an ancestral legacy to this royal progeny by means of his *Dastur-ul Amal* issued on 6th of October, 1857. This instruction was followed by Maharaja Pratap Singh in its letter and spirit. Saif-ud-Din, op.cit., vol.X, ff.307-8.
11. Maharaja Gulab Singh, while moving about the holding of Guru Baba, was told by a subject, "we are the natives of Kashmir and had in the exercise of our hereditary right built a *pacca* house. But the house has been razed to the ground by a sepoy, so that he may build one for himself at that place". To this Maharaja answered, "the *Nazim (Hakim-i Ala)* or the *Hakim (Kotwal)* who can afford to build the house is the owner of only the building material (bricks, stones and wood) and not of the land. The land really belongs to someone else". The Maharaja's reference here was to himself and not to anybody else. Saif-ud-Din, op.cit., Vol.III, f.142.
12. J&K, Pol. & Gen. Department, File No.191/H-75 of 1918. One *Tehsildar*, who had entered some land in the name of somebody in the revenue records was terminated from service because of the violation of the existing law that the state was the sole proprietor of the land in Kashmir, *JKA, Pol. And Gen. Deptt*, File No.58 of 1899.
13. A.A. Wingate, *Preliminary Report of Settlement Operation in Kashmir and Jammu*, Jammu, 1888, p.56 (Jammu Archive).

14. JKA, Gen. Deptt.(PR), file No.776 of S.1935. JKA, Gen. Deptt. (PR), File No: 840 of 1880. See also, JKA, *grain Control in Kashmir*, 1928, pp.1-17.

"We find in A.D. 1859 the country parcelled out among *Kardars*, who were land agents of the state, with very large powers. The *Kardar* divided his charge into three belts. In the lower belt, he allowed nothing to be grown but rice, in the middle belt he allowed some rice to be grown, and in the highest belt he permitted no rice. It was the *Kardar's* duty to get the largest possible amount of grain for the State and he knew that rice cultivation at a high altitude was on the whole unprofitable.

Every year the *Kardar* would arrange for the cultivation of the estate. The unit was known as *nafre* which consisted of a man and his wife and one adult son. To the *nafre* was given four *acres* of irrigated land. To the *nim-nafre*, or half unit consisted of a man and his wife, they were given two *acres* of irrigated land. The *pau-nafre*, or quarter unit, was or, and he only received one and a half *acres* of irrigated land". Lawrence, *The Valley of Kashmir*, London, 1895, p.402.

15. R.G. Taylor, *Punjab Political Diaries*, Vol.VI, INA, p.60.
16. Wingate, op.cit., p.90.
17. Ibid. Also, JKA, Gen. Deptt. (PR) File No:V. 486/B-93 of S. 1931, JKA, Gen. Deptt. (PR), File No.718 of S. 1933.
18. INA, For. Deptt. Sec., Nos.183-92; Progs. Feb., 1888; Administrative Report of Jammu and Kashmir State for the year 1888-89, p.37.
19. To quote Wingate, "The Kashmir are called cowardly, because they have lost the rights belonging to the peasantry elsewhere and tamely to be driven like sheep before a sepoy". Wingate, op.cit., p.61. It is quite strange to know that both the proprietary as well as occupancy rights were snatched from the Kashmir peasantry only, who were Muslims, but the peasantry of Jammu, the Non-Muslims, were not interfered with their rights which they fully enjoyed. R.L. Handa, *History of Freedom struggle in princely states*. New Delhi, 1968, p.252. This was a policy of "provincial prejudice" P.N. Bazaz, *Inside Kashmir*, Srinagar, 1941, p.72.
20. Wingate, op.cit., p.94.
21. Ibid., p.81.
22. W.R. Lawrence, the most famous Land Revenue Settlement Officer of Kashmir, succeeded Andrew Wingate in 1889. JKA, Gen. Deptt., (PR), 868-R of S. 1947, *Adm. Rep. 1889-90*, p.17, See also, P.N. K. Bamzai, *History of Kashmir*. Delhi, 1962, p.690.
23. INA, For. Deptt., xtl. A/B, K.W., Nos.11-98, Progs. Aug. 1896; Lawrence, op.cit., pp.428-30.

A small portion of peasants were given occupancy rights without the right to sale or mortgage and they could not be ejected so long as they paid the revenue to the state. Those tenants who occupied land at the time of the first regular settlement were declared to be the occupancy tenants and all the waste and follow land which was not occupied by anybody at that time was declared as *Khalsea* by the state. *A Handbook of J&K State*, 1944, pp.28-29. See also, G.J. Alder, *British India's Northern Frontier*, London, 1963, pp.95-96, Bazaz, op.cit., pp.71-72.

24. INA, For. Deptt Sec, Nos.257-85, Progs, Oct. 1897; JKA. Pol. & Gen. Deptt, File No.81/H-17 of 1897, and File No.226/JH-147 of 1906.
25. Wingate, op.cit., pp.54 and 82.
26. Ibid., p.92, INA, For Deptt, Sec. E, Nos.196-211, Progs. Dec. 1890; JKA, *A Handbook of J&K State*, pp.25-35.
27. Lawrence, op.cit., p.428.

28. Wingate, op.cit., p.86. See also, *Peasant Position*, pp.1-3; INA, For Deptt. Sec. K. Nos.37-39. Progs, Oct. 1889.
29. Wingate, op.cit., p.82; JKA, Gen Deptt. (PR), File Nos.718 of S. 1933; INA, For, Deptt; Intl. A., Nos.78-79, Progs. Feb., 1904.
30. Wingate, op.cit., p.62, 86 and 96, Lawrence, op.cit., p.413. See also, *INA, For. Deptt., Sec. E. Nos. 295-300*, Progs, Feb., 1891; E.F. Knight, *Where Three Empires Meet*, London, 1905, pp.69-70.
31. Lawrence, op.cit., p.414.
32. Ibid., p.428; Wingate, op.cit., p.91.
33. Wingate, op.cit., p.92.
34. Ibid., p.91.
35. Transfers were permitted within the municipal limits of Srinagar, and in Anantnag, Shopian, Bijbehara, Pampore, Sopore, Baramulla and Muzaffarabad towns. Bazaz, op.cit., pp.70-71; JKA, Pol. & Gen. Deptt; File No.91/H-75 of 1906; JKA A Handbook of J&K State, p.13; Adm. Rep. of 1915-16, pp.11-12.
36. For instance, Mr A.C. Baines rented a pice of land in *Shehr-i-Khas* tchsil for working a carpet factory belonging to Anwar Shah on the conditions that, "(a) he shall not acquire any right in the buildings which shall continue to be vested in Anwar Shah subject to the proprietary rights of the state in land; (b) no extensions shall be made to the building without the previous sanction of the state council; (c) nothing herein before contained shall preclude the state from acquiring land or the buildings for public purposes under the law in force; (d) the lease shall not be extended beyond a period of 12 years subject to renewal at the discretion of the state council, and (e) he (Mr. Baines) cannot enter into an engagement with Anwar Shah without the prior sanction of the Council: JKA Pol. & Gen. Dept, File No.113/B-19 of 1898.
37. INA, For. & Pol. Deptt. Sec. E. Nos.1211-13, Progs, September 1883.
38. INA, For Deptt; Sec., Nos.2164-68, Progs. August, 1884.
39. Wingate, op.cit., p.94.
40. Ibid., pp.90-105.
41. Bamzai, op.cit., p.690.
42. Ibid.
43. By *assami* Lawrence meant a man recognized by the state as the lawful occupant of land. The *Assami* would be having superior claim on land who had the *miras*. Ibid. p.28.
44. Ibid., pp.428-31.
45. Ibid., pp.431-32.
46. *Supra*, fn.23.
47. The *Jagridars, Pattadras, Illagadars Chukdars, Mufidars* and *Mukarraridars* are hereby collectively termed as landlords.
48. Though proprietary right were held by the state, the Darbar sometimes bestowed such rights on some persons it liked (Wingate, op.cit., pp.90-91). For instance, Dewan Kripa Ram was conferred the proprietary rights in land. JKA, Pol. & Gen., Deptt; FileNo:117 of 1896.
49. Wingate, op.cit., pp.90-105.
50. Ibid., See also, JKA, Gen. Deptt; (PR), File No.781 of S. 1933.

51. Lawrence, op.cit., pp.430-35. See also, *JKA, Pol. & Gen. Deptt; File No:67 of 1894*.
52. *JKA, Pol. & Gen., Deptt, File No.32-R/L-186 of 1913*.
53. *JKA, Register No.1281, J&K Tenancy Act, 1923*, Sees 15-17 K.R. Iyer, A Note on J&K State, 1925, pp.5-9. JK Archvies.
54. Rashid Tassir, op.cit., Vol.I, p.71; Sheikh Mohammed Abdullah, *Atish-i-Chinar*. Delhi, 1986, p.34.
The Memorandum was drafted at the residence of Ab. Aziz, *Zaildar*, the signatories to the Memorandum were: (1) Kh. Saad-ud-Din Shawl; (2) Kh. Hassan Shah Naqashbandi. (3) Mirwaiz Moulvi Ahmad Ullah; (4) Mirwaiz Hamdani; (5) Agha Syid Hassan Shah Jalali, (6) Mufti Sharif-ud-Din; (7) Kh. Hassan Shah Mehendi, etc. M.Y. Saraf, *Kashmiris Fight For Freedom*, Vol.I. Lahore, 1978, pp.336-37.
55. The Europeans were always disallowed to purchase land in Kashmir (*JKA, Pol. & Gen. Deptt; File No.138/H-32 of 1901*), yet they were allowed to get land on fixed ground-rent for opening schools, hospitals etc. in the Valley. *JKA, Pol. & Gen. Deptt.: File No.79 of 1896; JKA, Pol. & Gen. Deptt. File No.122 of 1896; Adm. Rep.1896-97*, pp.35-36.
56. The circular reads as:
"His Highness the Maharaja Bahadur Sahib has been pleased to inform you that in future all grants of land for agricultural and house-building purpose and grant of houses and other state property shall be made to state subjects only, and every proposal to make a grant shall be accompanied by a written statement setting forth the reasons for doing so. It should be made clear to all concerned that any disobedience of these orders will be dealt with severely and no exception will be made". *JKA, For. & Pol. Deptt; File No:328-PR/H-103 of 1925*. See also, Bazaz, op.cit., p.85.
57. The definition of state Subject were duly formed and passed a law on January 31, 1927, which laid as:
"All persons born and residing in the state before the commencement of the reign of Maharaja Gulab Singh Bahadur and also persons who settled therein before the commencement of Samvat 1942 (1884 A.D.), and have since been permanently residing, are the hereditary subjects of the state". (*JKA, For Pol. Deptt, File No.517-PR/H-157 of 1928*). This definition was really a bolt from blue to the outsiders as it meant instantaneous stoppage, in future of their entry into state service. get land, etc., *JKA. For & Pol. Deptt; File No.92/R-9 of 1937*.
58. The movement was first started by the formation of the Reading Room Party in April, 1930, and then the July 13, 1931 incident precipitated the process and ultimately led to the foundation of All J&K Muslim conference in 1932, which was later on changed into All J&K National Conference in 1939. For details, see S.M. Abdullah, op.cit., pp.40-60.
59. The Memorial was signed by ten leading Muslim leaders, of whom five belonged to Kashmir, namely: (1) Mirwaiz Hamdani, (2) Mirwaiz Moulvi Yusuf Shah, (3) Syid Hassan Shah Jalali, (4) Saad-ud-Din Shawl, and (5) Sheikh Mohammad Abdullah. S.M. Abdullah, op.cit., pp.47-50; Saraf, op.cit. Vol.I. pp.336-37; Also Bazaz, *Inside Kashmir*, p.89.
60. The term Zamindar in Kashmir has been invariably used to denote the tiller of the soil, whether he had his own land or was absolutely landless. *JKA (Chief Secretariat) File No.76 of 1896*.
61. M.Y. Saraf, op.cit., Vol.I, pp.335-38; Malik Fazl, Hussain, *Kashmir Aur Dogra Raj*, Srinagar, 1934, pp.130-10. See also, G.H. Khan, *Freedom Movement in Kashmir*, Delhi, 1980, pp.439-51.

62. *JKA, For & Pol. Deptt; File No.319 f 1933*
63. *Ibid.*
64. *JKA, Glancy Commission Report*, pp.26-28.
65. *Ibid.*, p.28.
66. *Supra*, fn.35.
67. *JKA, Glancy Commission Report*, p.28.
68. *JKA, For & Pol. Deptt; File No:319 of 1933; JKA, Maharaja's Order, Revenue Secretariat Notificaiton No:S-92, issued as Ailan, No:13, See also, Bazaz, op.cit., p.229.*
69. *JKA, Maharaja's Order on Glancy Commission Report*, p.4; *JKA, For. & Pol. Deptt. File No.92/R-9 of 1937; and 102/R-16 of 1937. Also JKA, A Handbook of J&K State*, pp.13-14.
70. *Supra*, fn. 59.
71. *JKA, For. & Pol. Deptt; File No.105/P-76 of 1935;Adm. Rep. 1938-39*, pp.47-49.
72. *Ibid.*, Also, *JKA, A Handbook of J&K State*, pp.15-17.
73. *JKA, For & Pol. Deptt. File No.92/R-9 of 1937, and 102/R-16 of 1938;Adm. Rep. 1938-39*, pp.48-49.